

# Exhibit 1

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ARCHIE COMIC PUBLICATIONS, INC.,

Plaintiff,

vs.

KENNETH W. PENDERS, II,  
*a/k/a* KEN PENDERS

Defendant.

Case No.: 10-CV-8858 (RMB)

Judge: Hon. Richard M. Berman

**AFFIDAVIT OF JON GOLDWATER  
IN SUPPORT OF ARCHIE COMIC  
PUBLICATIONS' MOTION FOR  
SUMMARY JUDGMENT**

I, Jon Goldwater, declare under the pains and penalties of perjury under the laws of the United States of America and the State of New York that the following is true and correct. The following facts are based on my personal knowledge. If called to testify regarding these facts, I could and would so competently testify:

1. I am Co-Chief Executive Officer of Archie Comic Publications, Inc. ("ACP"), a publishing corporation located in Mamaroneck, NY. I have held this position since 2009, when I acquired equity in the company. I am the son of the late John L. Goldwater, referenced in this case.

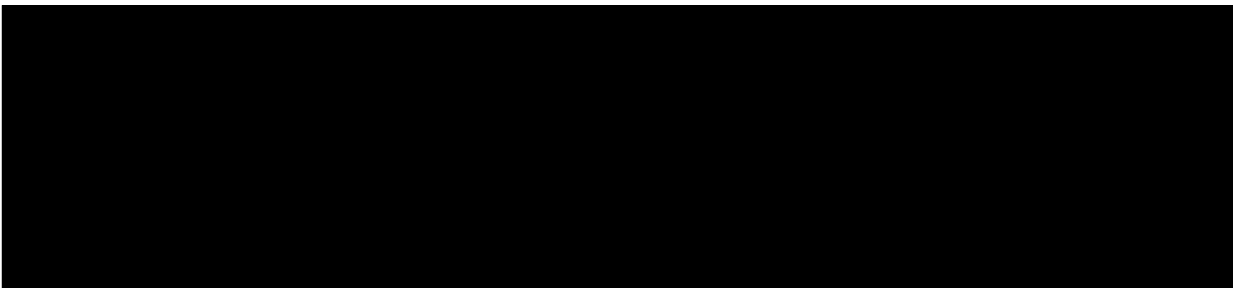
2. ACP was founded in 1939 by Maurice Coyne, Louis Silberkleit, and John L. Goldwater and is best known for its series of comics featuring the fictional characters created by its founders: Archie Andrews, Betty Cooper, Veronica Lodge, Reggie Mantle and Jughead Jones.

3. ACP has grown by leaps and bounds over the years and now includes many additional characters and comics outside of the characters first created some seventy years ago. ACP's comic universe also includes comic books featuring licensed properties.

4. ACP has sold over 1.5 billion (1,500,000,000) comics, which are published in a dozen foreign languages with worldwide distribution.

5. In 1992, ACP entered into a licensing relationship with Sega of America, Inc. ("Sega"), to produce, among other things, comic books which feature Sega's immensely popular character SONIC THE HEDGEHOG, and all related ancillary characters, such as KNUCKLES THE ECHIDNA ("Sonic Comic Book Series"). Attached as Exhibit A is a true and accurate copy of the fully executed Licensing Agreement between ACP and Sega from 1992 that has been kept in ACP's business records. This license was renewed repeatedly through December 31, 2010, when it expired. Throughout the last quarter of 2010 and into the fall of 2011, Sega and ACP endured protracted negotiations over a new license to Sonic properties. I am happy to report that this license was finally executed, as I will explain below. Attached as Exhibit B is a true and accurate copy of the fully executed Licensing Agreement between ACP and Sega signed by both parties in October 2011. But, we operated without a written license for nearly 10 months in 2011. Because we finally got the license, ACP withdrew its claim in this case for tortious interference (claim 5). However, the acts and conduct of Penders and the result has still caused us substantial harm and damages which support our breach of contract claims.

6. Under the 1992 license, as amended, ACP enjoyed an exclusive license, and then



7. My role as co-CEO is wide and varied, and includes direct reports Victor Gorelick and Mike Pellerito. I supervised their efforts described in their declarations. I have reviewed

their declarations and certify that I directed all of their activities concerning researching the company's business records and directing the prosecution of this lawsuit.

8. Throughout my tenure with ACP it has been company-wide policy to be sure all independent contractors have signed written Independent Contractor's Agreements in order to get paid for their contributions. A true and accurate copy of the Independent Contractor's Agreement with Ken Penders, as it exists in ACP's corporate business records, is attached to the Spallone Affidavit as Exhibit B. ACP's files contain hundreds of executed independent contractor's agreements. *See* Pellerito Affidavit ¶ 8. These voluminous documents are business records of ACP. The agreements are from as far back as the late 1980s. It is also company policy for independent contractors who work on comics featuring properties licensed to ACP to sign Licensed Comic Books Independent Contractor's Agreements. A true and accurate copy of the Licensed Comic Books Independent Contractor's Agreement with Ken Penders, as it exists in ACP's corporate business records, is attached to the Spallone Affidavit as Exhibit C. But, the Contractor's Agreement controls any submission of work from the contractor even if he/she has not yet signed a Licensed Comic Book Agreement; see paragraph 4 of the Contractor's Agreement, Exhibit B to the Spallone Affidavit.

9. ACP pays every independent contractor for the work they perform pursuant to the Independent Contractor's Agreement he or she signs with ACP. In order to receive payment for their contributions, ACP provides independent contractors with blank invoices that are to be signed and then returned to ACP. A signed invoice is then filled out by ACP for each contribution the independent contractor will be paid for.

10. I have personal knowledge and oversight of ACP's filing systems in my position as co-CEO of ACP. I confirm that the fully executed Revised Newsstand Comic Independent

Contractor's Agreement ("Contractor's Agreement) and Licensed Comic Books Independent Contractor's Agreement ("Licensed Comic Books IC Agreement") signed by Ed Spallone on behalf of ACP and Ken Penders (collectively "ACP-Penders Agreements") in 1996 were maintained by ACP in the ordinary course of business in our filing systems, and produced to Penders, through counsel, as they were kept by ACP. I confirm that Mike Pellerito and Victor Gorelick diligently searched for the wet-signature originals of these documents, but could not locate them (which is understandable considering they are more than 15 years old). However, Victor readily recovered the copies of these agreements in the files where they were supposed to be, along with a slew of other such agreements, samples of which are attached to the Spallone Affidavit as Exhibit A. I certify that those documents attached to the Spallone Affidavit as Exhibit A are true and accurate copies of the documents as kept in the ordinary course of business in the files of ACP.

11. Victor Gorelick, now Co-President and Editor-in-Chief of ACP, and Mike Pellerito, now President of ACP, are also responsible for keeping the files which included the ACP-Penders Agreements.

12. Victor and Mike are both personally familiar with Penders and his work product submissions to ACP.

13. All comic books created and produced by ACP, including the Sonic comic books, require a series of tasks to be completed including the creation of storylines, scripts, penciling, inking, and coloring each story. The editor in charge of the particular comic book series determines which independent contractor will work on each task.

14. In 2003 Mike Pellerito became Editor of the Sonic Comic Book Series. Mike would lay out the parameters of the story to an independent contractor who would then prepare a

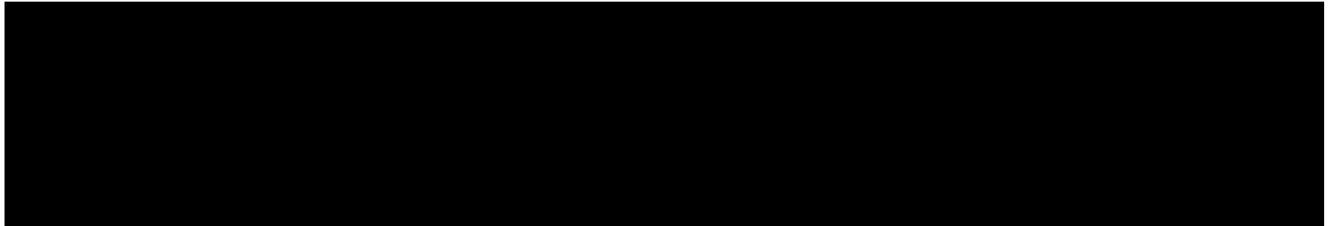
storyline based on Mike's instructions. The editorial staff, Mike included, would then review the storyline and make give the contractor comments and additional instructions as necessary. The contractor would revise and resubmit the work pursuant to the editorial instructions. Mike and the editorial staff would then review the submission and, if it met expectations, the storyline would be approved. From there a script would be prepared and, once approved by ACP, the storyline and script would be sent to an independent contractor to pencil the comic. After penciling, the work would then get inked. Finally, color would be added to the work. These steps are performed by a number of different people. No one person can claim they "created" any particular comic, as it is a collaborative effort, and a very complicated undertaking.

15. In 2010 Victor Gorelick, Mike Pellerito, and I (to a lesser extent) searched ACP's records for the original signature ACP-Penders Agreements. Despite diligently searching all of ACP's records, in our offices, on-site warehouse, and off-site warehouse, we could not find the original documents.

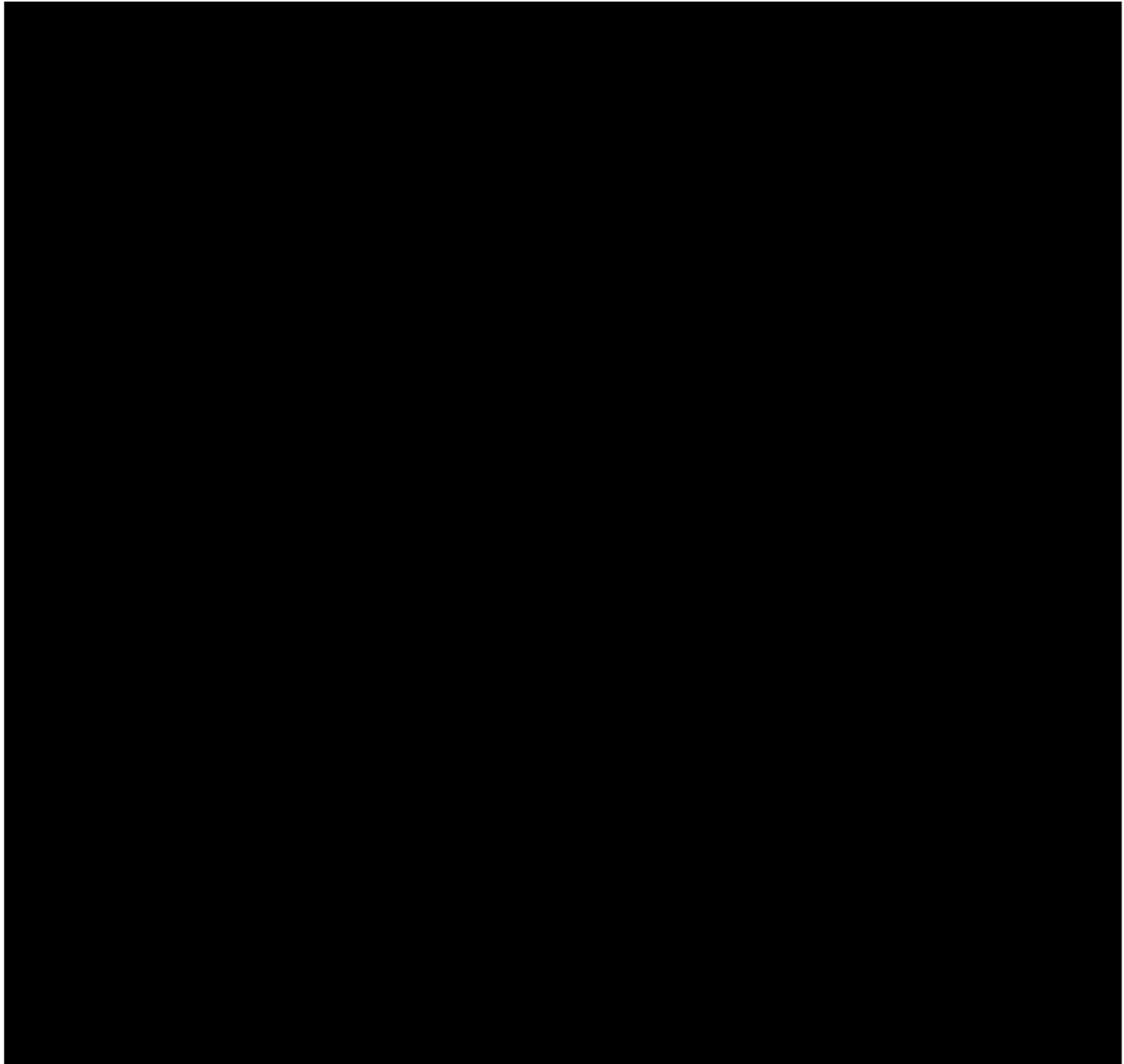
16. In late July 2011 Victor showed me email correspondence he had with Ken in December 2008 and January 2009. Ken's emails asked for copies of the work-for-hire agreements he signed with ACP. It was not just one but four requests Ken made for the work-for-hire agreements he signed! I confirm that the emails attached as Exhibit A to Victor Gorelick's declaration are true and exact copies of the emails Victor showed me in late July 2011. These are business records of ACP.

17. Ken Penders public statements regarding his alleged ownership and actions to register copyright in the Sonic Comic Book Series have caused significant damage to ACP, its business relationships, and standing in the comic book industry.

18. Specifically Ken has damaged the relationship between ACP and Sega. In 2011,

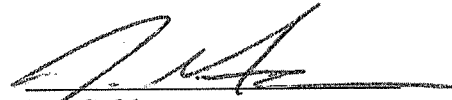


19. The subject of Ken Penders' actions and copyright registrations were,



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed February 3, 2012 at Mumwoneck, New York.

  
Jon Goldwater

NOTARY BELOW:

DEBORAH J. MONSERRATE  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01MO6057563  
Qualified in Putnam County  
My Commission Expires 4/23/15  
